

641—22.9(135) Adverse actions and the appeal process.

22.9(1) If the department determines that the provisions of Iowa Code section 135.37 and these rules have been or are being violated, the department may order that a tattoo establishment not be operated until the necessary corrective action has been taken. If the establishment continues to be operated in violation of the order of the department, the department may request that the county attorney or the attorney general make an application in the name of the state to the district court of the county in which the violations have occurred for an order to enjoin the violations. This remedy is in addition to any other legal remedy available to the department.

22.9(2) An order to cease operating shall be delivered by certified mail, return receipt requested, or by personal service.

22.9(3) Upon receipt of the order, the aggrieved party may request an appeal. The appeal shall be made in writing to the department within 30 days from the date of the aggrieved party's receipt of the department's order. The address is: Iowa Department of Public Health, Division of Health Protection, Tattoo Permit Program, Lucas State Office Building, Des Moines, Iowa 50319-0075. If such a request is made within the 30-day time period, the order shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the order upon satisfaction that the reason for the order has been or will be removed. After the hearing, or upon default of the aggrieved party, the administrative law judge shall affirm, modify or set aside the order. If no request for appeal is received within the 30-day time period, the department's order shall become the department's final agency action.

22.9(4) Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

22.9(5) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10.

22.9(6) When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule 22.9(7).

22.9(7) Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

22.9(8) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

- a. All pleadings, motions, and rules.
- b. All evidence received or considered and all other submissions by recording or transcript.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections and rulings thereon.
- e. All proposed findings and exceptions.
- f. The proposed decision and order of the administrative law judge.

22.9(9) The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

22.9(10) It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of the action pursuant to Iowa Code chapter 17A.

22.9(11) Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to

the department by certified mail, return receipt requested, or by personal service. The address is: Iowa Department of Public Health, Division of Health Protection, Tattoo Permit Program, Lucas State Office Building, Des Moines, Iowa 50319-0075.

22.9(12) The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.